

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

OCTOBER TERM, 1929

No. 5070

761

A. W. LAFFERTY, APPELLANT,

vs.

**PAUL HOLLENDER, ANNA MARIA ELESIA THORER,
ANNA MARIA THORER, ET AL.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED OCTOBER 16, 1929.

PRINTED NOVEMBER 1, 1929.

Court of Appeals of the District of Columbia

OCTOBER TERM, 1929

No. 5070

A. W. LAFFERTY, APPELLANT,

vs.

PAUL HOLLENDER, ANNA MARIA ELESIA THORER,
ANNA MARIA THORER, ELLA MARIA HOLLEN-
DER, AND JOHANNES MAX THORER, APPEL-
LEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

No. 5070.

A. W. LAFFERTY, Appellant,

vs.

PAUL HOLLENDER, ANNA MARIA ELESa THORER, ANNA MARIA
THORER, et al.

a Supreme Court of the District of Columbia.

Equity. No. 49142.

A. W. LAFFERTY, Plaintiff,

v.

PAUL HOLLANDER, ANNA MARIA ELESa THORER, ANNA MARIA
Thorer, Ella Maria Hollander and Johannes Max Thorer,
Copartners, Trading under the Firm Name and Style of
Theodor Thorer, and Howard Suhterland, as Alien Prop-
erty Custodian, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the Dis-
trict of Columbia, at the City of Washington, in said Dis-
trict, at the times hereinafter mentioned, the following
papers were filed and proceedings had in the above entitled
cause, to wit:

1 *Suit for Accounting and Enforcement of Lien for
Attorney Fees.*

Filed December 5, 1928.

In the Supreme Court of the District of Columbia, Holding
an Equity Term.

Equity. No. 49142.

A. W. LAFFERTY, Plaintiff,

v.

PAUL HOLLANDER, ANNA MARIA ELESa THORER, ANNA MARIA
Thorer, Ella Maria Hollander, and Johannes Max Thorer,
Copartners, Trading under the Firm Name and Style of
Theodor Thorer, and Howard Sutherland, as Alien Prop-
erty Custodian, Defendants.

I. Plaintiff for his cause of action states that at all the
times herein mentioned the plaintiff as well as Phelan
Beale, Esquire, and Paul C. Schnitzler, Esquire, were
2 attorneys at law, duly admitted to practice as attor-
neys and counsellors at law in all the courts of the
State of New York, and were each during all of said times
actively engaged in the practice of law in the State of New
York, and that plaintiff's legal residence is 510 Park Ave-
nue, New York City, New York.

II. That at all the times herein mentioned defendants
Paul Hollander, Anna Maria Elesa Thorer, Anna Maria
Thorer, Ella Maria Thorer and Johannes Max Thorer, were
co-partners domiciled and resident in Leipzig, Germany,
and trading and carrying on business under the firm name
and style of Theodor Thorer.

III. That defendant Howard Sutherland is Alien Prop-
erty Custodian, and is sued herein in his official capacity as
such, and that his official residence is in the City of Wash-
ington, District of Columbia.

IV. That in the year 1921 said co-partners firm of Theo-
dor Thorer employed this plaintiff and said Phelan Beale
and Paul C. Schnitzler, jointly, as attorneys for said firm
in the matter of procuring the release from seizure of a
large sum of money and other property which had been

theretofore seized and taken into custody by the Alien Property Custodian of the United States under the Trading With the Enemy Act, and agreed to pay to this plaintiff and said Phelan Beale and Paul C. Schnitzler, jointly, a contingent fee upon the value of the money and property ultimately released as follows:

3	On that portion of the recovery up to \$1,000.....	7%
	On the next 4,000.....	6%
	On the next \$10,000.....	5%
	On the next \$35,000.....	4%
	On the next \$50,000.....	3%
	On the next \$100,000.....	2%
	On the next \$300,000.....	1½%
	On all above \$500,000.....	1%

V. That up to June, 1924, this plaintiff and said Phelan Beale and Paul C. Schnitzler were joint attorneys for the Deutsch-Amerikanischer Wirtschaftsverband (German American Commerce Association), and were such continuously from 1921, and that said firm of Theodor Thorer was a member of said association, and that both in direct correspondence with this plaintiff and said Phelan Beale and Paul C. Schnitzler and in correspondence with said association said Theodor Thorer, co-partnership approved and ratified the employment of this plaintiff and said Phelan Beale and Paul C. Schnitzler to act as its attorneys in the behalf aforementioned on the terms aforementioned, and that while the terms and conditions of said employment were not reduced to the form of a written contract, the fees mentioned hereinbefore were stated both in letters and in printed form and sent to said firm of Theodor Thorer and were expressly agreed to in writing by said Theodor Thorer.

VI. That relying upon said contract of employment aforesaid, this plaintiff and said Phelan Beale and Paul C. Schnitzler did act jointly as attorneys for said firm of Theodor Thorer from 1921 until 1924, during which time
 4 this plaintiff and said Beale and Schnitzler worked faithfully for the passage of appropriate legislation by Congress for the release of the said seized property of said firm of Theodor Thorer, filing many joint printed briefs before the Committees of Congress having such legislation in charge, and before the President and Cabinet offi-

cers having to do with the subject of such release, and as a result of the work of this plaintiff and said Beale and Schnitzler, or at least following said work, which contributed to the end, the first release law applicable to said seized property was passed on March 4, 1923, known as the Winslow Law, which Act set the precedent for the ultimate release of all of said property by the later Settlement of War Claims Act of March 10, 1928.

VII. That under the terms of said Winslow Law said partners in said firm of Theodor Thorer had released to them a large sum of capital and income from their said custodianized property, in excess of \$100,000, the exact amount of which is unknown to plaintiff, and that under the following Act of March 10, 1928, said partners in said firm have received large additional sums from the Alien Property Custodian, and are about to receive large additional sums from the Alien Property Custodian under said two laws, in excess of \$500,000 over and above the first \$100,000 aforementioned.

VIII. That the agreement to pay the schedule of fees direct to this plaintiff by said firm of Theodor Thorer was ratified and confirmed at a conference held in the office of this plaintiff at 120 Broadway, New York City, on or
5 about January 10, 1922, between Arndt Thorer, as the duly accredited agent and representative of said firm of Theodor Thorer, and this Plaintiff, at which time said schedule of fees were gone over one by one and definitely agreed to. Previous to said conference this plaintiff had received a letter direct from the firm of said Theodor Thorer, dated December 3, 1921, photographic copy of which is hereto attached and marked "Exhibit A", informing this plaintiff that said Arndt Thorer was enroute to America as the duly accredited agent of said partnership firm of Theodor Thorer and authorized to make said agreement.

IX. That on January 14, 1922, said Arndt Thorer in a letter to this plaintiff, (copy of which in photograph is hereto attached and marked "Exhibit B") confirmed to this plaintiff that he had entered into an agreement with this plaintiff to pay to this plaintiff the regular schedule of fees heretofore mentioned in this complaint, upon the release of the seized property of said firm of Theodor Thorer, and in said last mentioned letter said Arndt Thorer also

stated that he had, in addition, written to the firm at Leipzig to specially confirm the oral agreement he had made with this plaintiff.

X. That on January 27, 1922, said firm of Theodor Thorer wrote a letter direct from Leipzig to this plaintiff confirming and ratifying the oral agreement made in the office of this plaintiff with Arndt Thorer, about January 10, 1922, as aforesaid. Said last mentioned letter is hereto attached in photographic copy, and marked "Exhibit C". Said last mentioned letter was dictated by Paul Hollander, the leading member of the firm of said Theodor
6 Thorer, in which he states:

"Confirming my respects of the 23rd inst., I beg to state that I received in the meantime news from Mr. Thorer about his interview and beg to inform you that I certainly will pay you the commission as arranged between the Deutsche-Amerikanischen Wirtschaftsverband and your firm as soon as the matter has been settled.

"I have always lived up to my obligations."

"Yours very truly,

"THEODOR THORER."

XI. That at the time of said oral agreement between Arndt Thorer and this plaintiff in the office of Plaintiff about January 10, 1922, said Arndt Thorer advised this plaintiff that said firm of Theodor Thorer and its respective partners would desire that their respective claims be filed with the Alien Property Custodian by others, mentioning E. M. Speer, of the Speer Fur Corporation, New York City as the probable agent who would be designated to actually receive the money and other property from the hands of the Alien Property Custodian, but stating that such arrangement would not militate in any way against the obligation of the firm of Theodor Thorer to pay to this plaintiff, on the release of said property, the fees as set forth in the schedule, as hereinbefore set out.

XII. That said last mentioned agreement between said firm of Theodor Thorer and this plaintiff is still in full force and effect, and that upon the property here-
7 tofore released to said firm of Theodor Thorer under said Winslow Law and the Settlement of War Claims Act there is now due this plaintiff from said firm of Theo-

dor Thorer and its respective partners sued herein a large sum of money, at least \$10,000, and that said firm and each of its partners now repudiate the agreement and all obligations under it, and said firm is about to receive the last of its money and other property from the hands of the Alien Property Custodian and to remove the same from the United States.

XIII. That up to this day this plaintiff has never received any notice from said firm of Theodore Thorer that plaintiff's services were to be dispensed with, or that said agreement was broken, and plaintiff continued to devote all his time, virtually, from 1921, till the passage of the general release law of March 10, 1928, to the preparation and filing of briefs before the Committees of Congress having such release legislation in charge, and in appearing personally before such committees as an advocate in favor of such release legislation, in behalf of said Firm of Theodor Thorer, and a few other clients who had in similar manner employed the legal services of this plaintiff in that behalf.

XIV. That during all of said time this plaintiff kept said firm of Theodor Thorer fully advised as to plaintiff's work, both by written reports, and by sending copies of said briefs to said firm of Theodore Thorer, and that said firm of Theodor Thorer requested that this plaintiff perform said services for it under the agreement last aforesaid.

XV. That this plaintiff, at his own expense had
8 printed forms of powers of attorney and other necessary blanks to be used in connection with the filing of applications under the release law of March 4, 1923, and the general release law of March 10, 1928, and mailed same to said firm of Theodor Thorer, and by personal conference with various members of said firm of Theodor Thorer this plaintiff gave advice and instructions as to how best to proceed to obtain the release of the property of said firm of Theodor Thorer under said laws.

XVI. That prior to the filing of this suit both Phelan Beale and Paul C. Schnitzler, for good and valuable considerations moving from this plaintiff to each of them, sold, assigned and transferred to this plaintiff all their respective interests in the first contract aforesaid, and all rights of said Phelan Beale and Paul Schnitzler, or either of them, against said firm of Theodor Thorer, including any and all

compensation due said Phelan Beale and Paul C. Schnitzler, or either of them, from said firm of Theodor Thorer because of the joint services aforesaid performed jointly by this plaintiff and said Beale and Schnitzler for said firm of Theodor Thorer from 1921 to 1924, inclusive, as aforesaid.

XVII. That following the passage of the said Winslow Law of March 4, 1923, said firm of Theodor Thorer and its members, defendants herein, had released to them in capital and income a sum in excess of \$100,000, the exact amount of which is unknown to plaintiff and can only be ascertained by an accounting, and that recently under the further release legislation of March 10, 1928, said firm of Theodor Thorer and its members, defendants herein have received and
9 had released to them by the Alien Property Custodian, or are about to have released to them by the Alien Property Custodian under said law, additional sums in excess of \$600,000, making total releases under the legislation and claims in which this plaintiff aided and assisted said firm of Theodor Thorer with his legal services for a period of seven years under the agreements aforesaid, more than \$700,000, and that under said agreements aforesaid the said firm of Theodor Thorer is now indebted to the plaintiff in a sum of at least \$10,000, for which this plaintiff claims a lien upon any residue of the original custodianized monies and property of said firm of Theodor Thorer in the hands of the Alien Property Custodian, and that the Alien Property Custodian now holds a balance due said firm of Theodor Thorer, and each of its members, defendants herein, above the sum of \$10,000.

XVIII. That prior to the filing of this suit plaintiff demanded an accounting of said firm of Theodor Thorer, and payment to this plaintiff by said firm of Theodor Thorer of the sums due this plaintiff under the agreements aforesaid, and that said firm of Theodor Thorer have failed and refused, and still fail and refuse to give to plaintiff any accounting or to pay to plaintiff anything for his said services, or for the thousands of dollars of disbursements of the plaintiff in connection with said seven years' work under the agreements aforesaid.

XIX. That plaintiff is without full, complete and adequate redress at law.

10

Prayer for Relief.

Wherefore plaintiff prays the Court for the following relief:

First. That subpoenas issue for each of the defendants herein named, commanding them to appear and answer this complaint as required by law and the rules of this court.

Second. That this Court will establish by its decree that this plaintiff is entitled to the percentages of fees upon all cash and other property released to said firm of Theodor Thorer by the Alien Property Custodian, as were agreed upon by and between said firm of Theodor Thorer, and as set out in paragraph IV of this Complaint.

Third. That the Court will order an accounting between this plaintiff and the defendants composing the firm of Theodor Thorer, defendants herein, to establish the exact value of the cash and other property which has been released to said firm of Theodor Thorer by the Alien Property Custodian, as aforesaid, and the amount of fees due this plaintiff on account thereof.

Fourth. That the Alien Property Custodian be required to withhold from release to said firm of Theodor Thorer and each of its members, defendants herein, a sum in the amount of \$10,000 upon which this plaintiff herein claims a lien for attorney fees until this litigation is finally ended.

Fifth. That this Court will establish by its decree that this plaintiff has a lien upon any balances due said firm of Theodor Thorer, or any of its members, defendants herein, upon any balances due said firm of Theodor Thorer by the

11 Alien Property Custodian under the laws aforesaid
to the amount of any attorney fees due this plaintiff
as may be found by the accounting herein prayed for.

Sixth. That this Court will by appropriate order and decree subject such balance in the hands of the Alien Property Custodian to the satisfaction and payment of such attorney fees as may be found to be due this plaintiff on the accounting herein prayed for.

Seventh. That this Court will grant unto plaintiff such other, further or different relief as the facts may show to be meet and proper in the premises.

A. W. LAFFERTY,
Plaintiff.

RICHARD L. MERRICK,
Attorney for Plaintiff.

Verification.

CITY OF WASHINGTON,
District of Columbia, ss:

A. W. Lafferty, being first duly sworn, on his oath states:
 I am the plaintiff named in the foregoing complaint. I
 have read over said complaint and know its contents. Each
 and every statement therein made is true as I verily believe.
 A. W. LAFFERTY.

Subscribed and sworn to before me this 4th day of De-
 cember, 1928.

[SEAL.]

JANET W. LAKE,
Notary Public.

Commission expires May 12, 1931.

12

“EXHIBIT A.”

Theodor Thorer gegründet 1862.
 Telegramm Adresse: Thorer.
 A. B. C. 4th & K/Sp. and Lieber's Codes used.
 Fernsprecher Nos. 537&593.
 Reichsbank-Giro-Conto.
 Postscheck Konto, Leipzig, Nr. 5389.

Leipzig, December 3rd, 1921.
 Brühl. 70.

Mr. A. W. Lafferty,
 120 Broadway,
 New York.

DEAR SIR:

I duly received your favors of the 12th and 14th of
 November, contents of which had my best attention.

In the meantime Mr. Hollander arrived at an understand-
 ing with the officers of the Deutsch-Amerikanische Wirt-
 schaftsverband and he did not write you before, because Mr.
 Arndt Thorer sails for the U. S. A. within these days and
 he shall call upon you in the near future.

I beg to remain, dear Sir,
 Yours faithfully,

THEODOR THORER.
 FRITZ THORER.

"EXHIBIT B."

Edward M. Speer, President and Treasurer. John F. Heinlein, Vice-President. Clayton J. Heermance, Secretary.

Speer Fur Corporation.

Edward M. Speer, Sole Owner.

Fur Merchants.

38-44 West 26th St.

San Francisco, Cal., 742 Market St. Seattle, Wash., 75 W. Marion St.

Cable Address: Pomatum or Speermade.

Sole selling agents for C. & E. Chapal Freres & Cie. and Theodor Thorer, Leipzig.

New York, Jan. 14th, 1922.

Mr. A. W. Lafferty,
120 Broadway, New York City.

DEAR SIR:

I received this morning your letter from yesterday contain of which had my best attention. According to our agreement during my visit in your office last Monday I wrote to Leipzig to confirm you by letter that the firm of Theodor Thorer is willing to pay you your regular fees against the property recovered.

But I must say that I did not expect—after our conversation and after cleaning up all misunderstandings—that you would use again such terms as you did in the last paragraph of your letter.

Very sincerely yours,

ARNDT THORER.

"EXHIBIT C."

Theodor Thorer

gegründet 1862.

Hol/Sp.

Telegramm Adresse Thorer.

A. B. C. 4th & 5th Edons and Lieber's Codes used.
Fernsprecher Nos. 537 & 593.
Reichsbank-Giro-Conto.
Postscheck Konto, Leipzig, Nr. 5389.

Leipzig, January 27th, 1922.
Brühl 70.

Mr. A. W. Lafferty,
120 Broadway,
New York.

DEAR SIR:

Confirming my respects of the 23rd inst., I beg to state that I received in the meantime news from Mr. Thorer about his interview and beg to inform you that I certainly will pay you the commission as arranged between the Deutsche-Amerikanischen Wirtschafts-Verband and your firm as soon as the matter has been settled.

I always have lived up to my obligations.

Yours very truly,

THEODOR THORER.

15

Motion to Dismiss.

Filed July 24, 1929.

* * * * *

Now comes Paul Hollender, Anna Maria Elesa Thorer, Anna Maria Thorer, Ella Maria Hollender and Johannes Max Thorer, parties defendant in the above entitled case, by their attorney, and appear specially and for the sole purpose of moving the Court to dismiss the bill of complaint on the grounds that this Court is without jurisdiction to hear and determine the above cause for the following reasons:

1. It appears affirmatively from the bill of complaint that this Court does not have jurisdiction in equity for the reason that the plaintiff is seeking to recover an alleged debt against property vested in the Alien Property Custodian under the terms of the Trading with the Enemy Act, approved October 6, 1917, as amended, which alleged debt, according to the averments of the bill of complaint did not become owing to and owned by the claimant until after October 6, 1917.

2. That the plaintiff has not stated sufficient facts in his bill of complaint to entitle him to equitable relief under Section 9 of the Trading with the Enemy Act.

3. That this Court is without jurisdiction to grant the relief prayed for.

4. This Court has no jurisdiction over the subject matter of this suit and it has no jurisdiction over this cause of action.

GEO. S. WARD,
Attorney for Defendants.

16 *Notice for Hearing of Motion to Dismiss.*

Filed July 24, 1929.

* * * * *

Bright, Thompson, Henricks & Warren,
Southern Building,
Washington, D. C.:

Please take notice that the motion filed by Paul Hollender, Anna Maria Elesa Thorer, Anna Maria Thorer, Ella Maria Hollender and Johannes Max Thorer, defendants in the above entitled cause to dismiss the bill of complaint herein, will be on the calendar for a hearing on Thursday, August 1, 1929.

Service upon me of a copy of the above notice acknowledged this 24th day of July, 1929.

BRIGHT, THOMPSON, HINRICHS &
WARREN,

Attorneys for Plaintiff.

Order for Appearance Specially.

Filed July 24, 1929.

* * * * *

The Clerk of said Court will enter my appearance for defendants specially.

GEO. S. WARD,
Attorney.

17

Decree.

Filed August 1, 1929.

* * * * *

This cause comes on to be heard upon the bill of complaint and the motion to dismiss filed by the defendants Paul Hollender, Anna Maria Elesa Thorer, Anna Maria Thorer, Ella Maria Hollender and Johannes Max Thorer, and after due consideration thereof it is by the Court this 1st day of Aug. 1929

Adjudged, ordered and decreed that the bill of complaint be and it is hereby dismissed with costs.

PEYTON GORDON,
Justice.

From the foregoing decree the plaintiff, by his attorney, notes an appeal, in open Court, to the Court of Appeals of the District of Columbia, and the maximum of an undertaking for costs is hereby fixed at \$100.00 with leave to deposit the sum of \$50.00 in cash with the Clerk in lieu thereof.

PEYTON GORDON,
Justice.

Memorandum.

August 10, 1929.—\$50 deposited in lieu of Appeal Bond.

18

Assignment of Errors.

Filed August 14, 1929.

* * * * *

The Court erred:

(1) In granting the Motion to dismiss the Bill of Complaint filed by Defendants Paul Hollender, et al.;

(2) In not denying the Motion to dismiss the Bill of Complaint filed by the Defendants Paul Hollender, et al.

BRIGHT, THOMPSON, HINRICH &
WARREN,

Attorneys for the Plaintiff.

Service of a copy of the foregoing Assignment of Errors is hereby acknowledged this 13 day of August, 1929.

GEO. S. WARD,
Attorney for the Defendants,
Paul Hollender et al.

Designation of Record.

Filed August 14, 1929.

* * * * *

Now comes A. W. Lafferty, the Appellant in the above entitled cause, and designates and directs the Clerk to print the parts of the record which he desires to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

(1) The Bill of Complaint of the Plaintiff herein and the exhibits thereto annexed filed December 5, 1928;

(2) Motion to dismiss the Bill of Complaint on behalf of Defendants Paul Hollender, et al., filed herein on July 19 24, 1929;

(3) Notice and acknowledgment of appearance of George S. Ward (specially) for Defendants filed herein July 24, 1929;

(4) Decree dismissing Bill of Complaint as to said Defendants Paul Hollender, et al., and notice of appeal thereon filed herein on August 1, 1929;

(5) Memorandum of deposit of cash in lieu of costs bond on appeal dated August 10, 1929;

(6) Assignment of errors;

(7) This designation.

BRIGHT, THOMPSON, HINRICHS &
WARREN,
Attorneys for the Plaintiff.

Service of a copy of the foregoing Designation of Record is hereby acknowledged this 13 day of August, 1929.

GEO. S. WARD,
Attorney for Defendants, Wilhelm
Ernst Meyer et al.

20 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49142, in Equity, wherein A. W. Lafferty is Plaintiff and Paul Hollander et al. are defendants, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of October, 1929.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 5070. A. W. Lafferty, appellant, vs. Paul Hollender, Anna Maria Elesa Thorer, Anna Maria Thorer, et al. Court of Appeals, District of Columbia. Filed Oct. 16, 1929. Henry W. Hodges, Clerk.